IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 826 OF 1993

Waman Vishnu Ayre ..Petitioner

versus

The President, Maharashtra Slum Area (I. C. & R) Tribunal, Bombay & Ors. ..Respondents

Ms. S. Paradkar h/f. S. J. Paradkar for the Petitioner.

Mr. Sachin Punde for the Respondent No.3.

CORAM : D. G. DESHPANDE, J.

DATE : 11TH OCTOBER, 2006

ORAL ORDER :

1. Heard counsel for the petitioner and the respondent No.3.

2. The suit was filed by the respondent No.3 against the petitioner in the City Civil Court for possession. The objection was taken by the petitioner - occupant on the ground that the area was declared as slum and no permission was obtained by the respondent No.3 for filing the suit. While the suit was pending, the respondent No.3 came up

with a case in an appeal filed by him against the order declaring the area as a slum. Such an order was set aside by the Competent Authority. A copy of the order is filed by the petitioner at page 37. It is order dated 6.11.1992. By that order the Competent Authority set aside the declaration dated 8.9.1977 published in the Government Gazette dated 22.9.1977 so far as it related to the property involved in the said appeal before the Competent Authority.

3. Amongst other grounds, counsel for the petitioner contended that under Section 4 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act,1971, any person aggrieved by a declaration made under sub section (1) has to file an appeal within thirty days to the Tribunal i.e section 4(3) itself provides that no such appeal filed after the expiry of 30 days shall be entertained.

4. Counsel for the petitioner therefore contended that this order of declaring slum was dated 8.9.1977 or gazette dated 22.9.1977, the appeal was filed by the respondent No.3 before the

Tribunal in 1986 i.e. after 9 years and in the impugned order nothing is shown that any application for condonation of delay was made. Further, according to her no notice of the appeal was given to all the persons concerned, who were beneficiaries of the said notification. She also contended that when sub section 3 of section 4 itself provide that no appeal shall be entertained after the period of 30 days, provisions of Section 5 of the Limitation Act did not apply, and, therefore, the Tribunal committed a grave error in admitting and allowing the appeal after the period of nine years i.e. much beyond the prescribed period of appeal.

5. Counsel for the respondent No. 3 however contended that petitioner has no locus standi to file this petition because he is a trespasser. That issue cannot be decided in this petition. The question is about order of the Tribunal in the appeal, and, on the face of it, the said order is illegal and the petition therefore has to be allowed.

6. Counsel for the respondent No. 3 however contended that during the pendency of the suit, they

applied to the Authorities for permission to file a suit against the petitioner. The Authorities i.e. Deputy Collector by order Exhibit C-1 of this petition dated 5.8.1992 clarified that no such permission was necessary. He therefore states that even if the declaration regarding slums remains, as a consequence of the decision in the petition, his right to file the suit and his suit should not be permitted to be affected as no permission was required. There appears to be a force in the contentions and therefore it has to be accepted.

7. In the result, petition is allowed. Rule made absolute. Order of the Maharashtra Slums Tribunal dated 6.11.1992 allowing the appeal of the respondent No.3 is quashed and set aside. Consequently, a declaration under the Slums Act in respect of this area dated 8.9.1977 and Gazette dated 22.9.1977 is held to be perfectly legal and valid. It is further clarified that since the Authorities have clarified that no permission is required to file a suit by the Respondent No.3 against the petitioner, the court will take this aspect into consideration. Petition disposed of accordingly, No order as to costs.

(D.G. DESHPANDE, J.)